



# MASSACHUSETTS MEDICAL SOCIETY

*Every physician matters, each patient counts.*

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June 10, 2008

Secretary JudyAnn Bigby, MD  
Executive Office of Health and Human Services  
One Ashburton Place, 11th Floor  
Boston, MA 02108

Dear Secretary Bigby:

On behalf of the Massachusetts Medical Society and its 20,500 members, we write to strongly support the need for transparency regarding health care information across all sectors. We appreciate the Council's efforts to both ensure that meaningful health care quality and cost data will be available on the state website, and to move forward with its quality and cost effectiveness goals and initiatives.

The Medical Society appreciates the importance of regulation 129 CMR 3.00 which governs the disclosure of Health Care Claims Data submitted by carriers and third-party administrators to the Health Care Quality and Cost Council and which protects the privacy of data subjects and the confidentiality of health care claims data while permitting limited access to such data where such access serves the public interest.

We would like to share our support for many elements of these newly proposed regulations as well as a small number of concerns that the Society would like to bring forward regarding the regulations and process.

- We strongly support the creation of a Data Release Review Board and the expertise anticipated in the makeup of the Board. We recommend that similar to the composition of the Division of Health Care Finance and Policy (DHCFP) Review Board for Surgical Volume, that a practicing physician representative from the Medical Society serve on the Data Release Review Board to represent statewide physicians and offer the Board resources and perspective.
- We also appreciate that the Data Release Review Board will review the proposed use of the data, the credentials of the requesting party, and the nature of the data requested and consider whether the proposed

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use of the data will jeopardize patient privacy. We also appreciate that the Board will review whether the proposed disclosure may enable collusion or anti-competitive conduct, and the effect of the proposed use on the quality and cost of health care. The Society would like to support the Council's intent to ensure that individual physician confidentiality is upheld and, therefore, recommends that individual physician names be encrypted.

- The Society recommends that at this time only group physician data should be considered for the public website and use of the data by other entities. We also recommend that the Data Release Review Board shall establish criteria for the review of all applications for health care claims data, and oversee the Executive Director and Council staff regarding the following: review of all applications for compliance with the established criteria; approval of applications for Public Unrestricted Data Elements that meet all of the requirements of the Review Board and 129 CMR 3.03, 3.04 and 3.05; rejection of all applications for Data Not for Release; referral to the Data Release Review Board for review of all applications for Restricted Data Elements and any other applications that the Executive Director or Council staff deem appropriate for the Board's review; and preparation of materials for presentation to the Data Release Review Board and others.
- We support that the regulations indicated that the applicant, his/her employees, and his/her agents or contractors shall not use the Health Care Claims Data, alone or in combination with any other data, to identify individual patients, clinicians or payment rates, nor will the applicant, his/her employees, and his/her agents or contractors attempt to identify individual patients, clinicians, or payment rates from the data, or to contact individual patients or clinicians. We reiterate that the responsibility for protecting the data lies with the Commonwealth and that requirements on researchers, while they must be stringent, are not a substitute for the state's responsibility to keep the data protected while maintaining legitimate access.
- The MMS continues to strongly support the rights of consumers to make informed health care choices, using meaningful, valid and accurate information that has been fairly vetted for accuracy with the physician community before release. Like the DHCFP, we would like to recommend that all data that will be on the public website or requested and accepted by

another entity for data release, must be reviewed by the relevant physician group at least 30 days before release and that notification of this report be made to the Medical Society 30 days before release. In addition, it is imperative that there be a mechanism for physicians to correct errors when they appear in the data. Thirty (30) days is a minimal notice period to review complex data files. Chapter 118 G, Section 6 provides that when collecting information or compiling reports intended to compare individual health care providers, several requirements must be implemented, including the sharing of provider profiles and other information that have been compiled regarding provider performance, with providers under review prior to dissemination; provided, however, that opportunity for corrections and additions of helpful explanatory comments shall be provided prior to publication and, provided further, that such profiles shall only include data which reflect care under the control of the provider for whom such profile is prepared. Such quality assurance measures for data are critical and must be given sufficient time to work well for the quality of released data to be good enough for meaningful interpretation.

- We support the regulations requirement that the applicant shall not publish or otherwise disclose any Restricted Data Elements, or any data derived or extracted from such data, in any paper, report, website, statistical tabulation, or similar document unless such paper, report, website, statistical tabulation, or similar document conforms to the standards for de-identification set forth under 45 CFR 165.514(a), (b)(2), and (c) and nor shall any such public paper, report, website, statistical tabulation, or similar document contain individual payment rates, report any data on six or fewer individuals. We would recommend that the statistical experts on the Data Release Review Board define the number of claims needed to derive data, but it be well in excess of ten claims.
- We would like to encourage the Council to focus its efforts more on releasing information to researchers, payers and provider organizations rather than proprietary organizations (e.g. Subimo) when considering requests. We feel that this would restrict the use of a sensitive and valuable state resource to those who have a legitimate reason to understand health care utilization and health service delivery patterns. For profit organizations are selling data to all purchasers and can be motivated by profit, not public interest.

Secretary Judy Ann Bigby, MD  
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The Society looks forward to working with and strongly supporting you and the Health Care Quality and Cost Council to help improve clinical outcomes and educate the public with meaningful and reliable measures of quality care and cost.

Sincerely,

A handwritten signature in black ink, reading "Bruce S. Auerbach MD". The signature is written in a cursive, flowing style.

Bruce S. Auerbach, MD  
President

BSA/jc